

## MINUTES

### **INSOLVENCY LAW COMMITTEE OF THE BUSINESS LAW SECTION OF THE STATE BAR OF CALIFORNIA**

**February 19, 2004**

The regularly scheduled meeting of the Insolvency Law Committee of the Business Law Section of the State Bar of California was held on February 19, 2004, at the offices of Orrick, Herrington & Sutcliffe in Sacramento, California and by video conference at Procopio, Cory, Hargreaves & Savitch in San Diego.

The following members attended the meeting in person, by video conference or by telephone:

Geraldine Valdez  
Peter Bronson  
Paul Pascuzzi  
Radmila Fulton  
Molly Baier  
David Bertenthal  
Mike Buckley  
Elizabeth Berke-Dreyfuss  
Lynn Ernce  
Lisa Fenning  
Bob Franklin  
Judy Gibbs  
Eve Karasik  
Michael Koch  
Howard Kollitz  
Greg Lunt  
Donna Parkinson  
Tracy Schweitzer  
David Shemano  
Colin Wied  
Russell Clementson (Ex Officio)  
Sandy Lavigna (Ex Officio)  
Bennet Young (Ex Com Liason)

The following members did not attend the meeting: Brian Davidoff, Mark Porter, Dan Schechter, and Cliff Stevens.

Geraldine Valdez called the meeting to order at approximately 9:30 a.m.

#### **1. Approval of Minutes: January 16, 2004.**

The minutes of the January 16, 2004 meeting were approved.

## **2. Membership.**

Brian Davidoff resigned from the Committee in February 2004. Eric Sagerman's appointment to the Committee expired at the end of the 2003 term. The Committee discussed whether to fill the vacant spot now or fill the spot at the regular interval for new members. The Committee decided to fill the spot at the regular interval for new members since that process will begin in April anyway. Geraldine Valdez requested that any new members who have not filled out the membership review matrix in the materials to please complete it and send it to her as soon as possible. Geraldine also sent the updated roster to Susan Orloff.

## **3. Meeting Schedule.**

The Committee discussed the logistics for the May 14, 2004 meeting which will be held in Yosemite in conjunction with the California Bankruptcy Forum. The usual time for the meeting, the Friday morning, conflicts with an optional CBF program. The Committee decided to host a meeting in Paul Pascuzzi's suite after the Friday afternoon programs and before the Friday dinner. The Committee will invite non-member lawyers to the informal meeting for the purpose of informing them about the Committee and its tasks, with the hope of gaining their interest in applying for membership. Geraldine will draft language for an e-blast and posting at the registration desk for the CBF Conference. There will not be a call-in for this meeting.

## **4. Budget.**

Geraldine Valdez discussed and reviewed the 2003-2004 budget.

## **5. Subcommittee—Assignments.**

Nothing to report at this meeting.

## **6. Progress Reports on Current Projects from Legislation Subcommittee (Item 8 on Agenda).**

**A. Badges of Fraud ALP Status.** This project was to insert the common law badges of fraud back into the statute. The proposed legislation will be sponsored by Senator Charles S. Poochigian as SB 1408. Congratulations to Dan Schechter and Judy Gibbs. Dan and Judy will continue to monitor the progress of the bill.

### **B. New Projects.**

**i. Model Real Estate Order and Findings.** The revisions to the findings and order that Geraldine suggested at the last meeting were made. However, Donna Parkinson received a letter from a real estate lawyer with numerous comments on the proposed order and findings. These comments go beyond the issues raised by the separation of the findings from the order into separate documents as is required under the Federal Rules of Civil Procedure. Paul Pascuzzi will review the letter, make revisions, and circulate a redline version for the Committee's review at the next meeting. Once the

Committee approves final revised versions of the order and findings, Greg Lunt and Geraldine have contacts in the title company industry to review them. Judy Gibbs also found that the California Land Title Association website endorsed the model order and findings, which was previously unknown to the Committee.

ii. CCP §§ 697.530 and 708.110 et seq. These projects deal with the problems of perfecting a California judgment lien against a foreign corporation and secret liens. Peter Bronson will explore whether other State Bar committees, such as the UCC Committee or the Litigation Committee, might be interested in these issues.

iii. H.R. 975 (Bankruptcy Reform Act). As anticipated by Lisa Fenning in her report to the Committee last meeting, Greg Lunt reported that there was some action on the Bankruptcy Reform Act recently in that there was an attempt to tack it onto the extension of Chapter 12 in an effort to cut off debate in the Senate. That effort failed. Lisa reported that the bill could move forward quickly, but that is not likely given the current political environment.

## **7. Legislation Subcommittee's New Bill Report (Item 10 on Agenda).**

### **A. State Bills.**

Nothing to report at this meeting.

### **B. CLRC.**

With regard to the California Law Review Commission survey on the uses of the assignment for benefit of creditors provisions, the Committee decided that the survey should be completed. Many members recognized the problems with the ABC procedures. Mike Buckley, Howard Kollitz, Bob Franklin, and Donna Parkinson all volunteered to circulate ABC materials that they have, examine the issues and recommend a course of action. There was also a suggestion to put ABC materials on the ILC website, which Mike will explore. Regarding the CLRC memo discussing proposed revisions to the mechanics lien law, Mike Koch will review the memo and materials and report to the Committee at the next meeting.

### **C. Federal Bills.**

Regarding the proposed revisions to avoidance law in SB 1970 and SB 832, Mark Porter, Paul Pascuzzi, and Sandy Lavigna will analyze the two bills and report on them. The general purpose of the bills appears to be aimed at the avoidance of payments of excessive compensation to insiders. However, whether the proposed revisions to the Bankruptcy Code are necessary or appropriate to achieve that goal needs to be examined.

Regarding HR 2120, the House Committee on the Judiciary granted an extension for further consideration to March 2, 2004. As of the date of the meeting, no further action had been reported. Greg reported no further change in status on SB 1264 and SB 1331. Regarding the revisions to the Federal Rules of Bankruptcy Procedure, no formal action could be taken because of the impending deadline for comments.

**D. State Bulk Sales Laws.** At the prior meeting, the Committee voted to join in the UCC Committee's report recommending the repeal of the bulk sales laws. Geraldine Valdez is working with the chair of the UCC Committee to determine the best manner in which to indicate the ILC's support.

**8. Programs and Education Subcommittee Report (Item 6 on Agenda).**

Peter Bronson reported that the Winter SEI Bankruptcy 101 program, presented by Peter, Geraldine Valdez and Judge Mund, was well attended and very successful. The State Bar 2004 Spring Meeting is being held on the same dates as the California Bankruptcy Forum, so ILC will not be putting on a bankruptcy program. For the October 2004 Annual Meeting, Radmila Fulton reported on her efforts (and those of Rob Harris) to get spots for two programs. Radmila reported that those efforts are continuing. As discussed at the last meeting, Mark Porter is working on a presentation on asset sales under Bankruptcy Code Section 363. A second program on bankruptcy fraud was determined to be a good topic for this program. Radmila and Rob will continue to work on getting two programs, then the Committee can discuss the panel for the fraud program. If only one program is allowed, the Committee had previously decided that the fraud program would be best for the audience expected at the October meeting.

**9. Website Report and Constituency Outreach Project and Report from Constituency/Outreach/Website Subcommittee (Item 7 on Agenda).**

Bob Franklin and Mike Buckley reported for the website, et al. subcommittee. The ILC was asked to put together a short statement advertising its website for publication in the Business Law News. Mike and Bob will work on that. The Committee discussed assembling the assignment for benefit of creditors materials that will be gathered as discussed above for presentation on the website. The Committee is continuing its ongoing efforts to solicit emails for e-blast lists.

**10. Publications Subcommittee Current Projects Report.**

A special note of thanks to Dan Schechter for his efforts in completing the annual review under the new guidelines. David Shemano will monitor the publication efforts for the annual review. The Committee discussed topics for the mandatory article for the summer issue of the Business Law News (draft due by June 1, 2004). Volunteers for the article and the topics are as follows: Geraldine Valdez, the model real estate order and findings; Peter Bronson, secret liens; and Dan Schechter, UCC revised article 9.

**11. New Business.**

**A. Revised Article 7.** Greg Lunt reported on the proposed revisions to Article 7 of the Commercial Code, as taken from a review of the UCC Committee's write-up of the proposed revisions. Greg reported that the changes generally are designed to conform Article 7 to the changes in other articles of the UCC. Greg described generally some of the areas of proposed changes. The Committee decided that none of the areas of proposed change are of interest to the insolvency law purpose of the Committee.

**12. Adjournment.** The meeting was adjourned at approximately 11:30 a.m.

Respectfully submitted,  
Paul Pascuzzi